

decided by the Executive Office for Immigration Review during such proceedings.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991; 58 FR 58937, Nov. 5, 1993]

§ 240.8 Appearance.

The applicant may be required to appear in person before an immigration officer. The applicant may be required to present documentary evidence to establish his or her eligibility. The applicant may have a representative as defined in § 292.1 of this chapter present during any examination. Such representative shall not directly participate in the examination; however, such representative may consult with and provide advice to the applicant. The record of examination shall consist of the application, documents relating to the application, and the decision of the district director.

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§ 240.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:

(i) Passport;

(ii) Birth certificate accompanied by photo identification; and/or

(iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

(2) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any of the following:

(i) Employment records, which may consist of pay stubs, W-2 Forms, certification of the filing of Federal, State, or local income tax returns; letters from employer(s) or, if the applicant has been self employed, letters from banks, and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. Such letters from employers must include:

(A) Alien's address(es) at the time of employment;

(B) Exact period(s) of employment;

(C) Period(s) of layoff; and

(D) Duties with the company.

(ii) Rent receipts, utility bills (gas, electric, telephone, etc.), receipts, or letters from companies showing the dates during which the applicant received service;

(iii) School records (letters, report cards, etc.) from the schools that the applicant or his or her children have attended in the United States showing name of school and period(s) of school attendance;

(iv) Hospital or medical records showing medical treatment or hospitalization of the applicant or his or her children, showing the name of the medical facility or physician as well as the date(s) of the treatment or hospitalization;

(v) Attestations by churches, unions, or other organizations of the applicant's residence by letter which:

(A) Identifies applicant by name;

(B) Is signed by an official whose title is also shown;

(C) Shows inclusive dates of membership;

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(D) States the address where applicant resided during the membership period;

(E) Includes the seal of the organization impressed on the letter or is on the letterhead of the organization, if the organization has letterhead stationery;

(F) Establishes how the attestor knows the applicant; and

(G) Establishes the origin of the information being attested to.

(vi) Additional documents to support the applicant's claim, which may include:

(A) Money order receipts for money sent in or out of the country;

(B) Passport entries;

(C) Birth certificates of children born in the United States;

(D) Bank books with dated transactions;

(E) Correspondence between the applicant and other persons or organizations;

(F) Social Security card;

(G) Selective Service card;

(H) Automobile license receipts, title, vehicle registration, etc;

(I) Deeds, mortgages, contracts to which applicant has been a party;

(J) Tax receipts;

(K) Insurance policies, receipts, or letters; and/or

(L) Any other relevant document.

(3) *Evidence of eligibility under section 244A(c)(2) of the Act.* An applicant has the burden of showing that he or she is eligible for benefits under this part.

(4) *Evidence of valid immigrant or non-immigrant status.* In the case of an alien described in § 240.2(f)(2), Form I-551 or Form I-94 must be submitted by the applicant.

(b) *Sufficiency of evidence.* The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements.

(c) *Failure to timely respond.* Failure to timely respond to a request for information, or to appear for a scheduled interview, without good cause, will be deemed an abandonment of the application and will result in a denial of the application for lack of prosecution.

Such failure shall be excused if the request for information, or the notice of the interview was not mailed to the applicant's most recent address provided to the Service.

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§ 240.10 Decision by the district director or Administrative Appeals Unit (AAU).

(a) *Temporary treatment benefits.* The district director shall grant temporary treatment benefits to the applicant if the applicant establishes *prima facie* eligibility for Temporary Protected Status in accordance with § 240.5.

(b) *Temporary Protected Status.* Upon review of the evidence presented, the district director may approve or deny the application for Temporary Protected Status in the exercise of discretion, consistent with the standards for eligibility in §§ 240.2, 240.3, and 240.4.

(c) *Denial by district director.* The decision of the district director to deny Temporary Protected Status, a waiver of grounds of inadmissibility, or temporary treatment benefits shall be in writing served in person or by mail to the alien's most recent address provided to the Service and shall state the reason(s) for the denial. Except as otherwise provided in this section, the alien shall be given written notice of his or her right to appeal a decision denying Temporary Protected Status. To exercise such right, the alien shall file a notice of appeal, Form I-290B, with the district director who issued the denial. If an appeal is filed, the administrative record shall be forwarded to the AAU for review and decision, pursuant to authority delegated in § 103.1(f)(2), except as otherwise provided in this section.

(1) If the basis for the denial of the Temporary Protected Status constitutes a ground for deportability or excludability which renders the alien ineligible for Temporary Protected Status under § 240.4 or inadmissible under § 240.3(c), the decision shall include a charging document which sets forth such ground(s).

(2) If such a charging document is issued, the alien shall not have the right